

# EXHIBIT 1

04/04/2007 15:58 FAX 4153977188

KEKER &amp; VAN NEST LLP

002

1 KEKER & VAN NEST, LLP  
 2 JEFFREY R. CHANIN - #103649  
 3 DARALYN J. DURIE - #169825  
 4 ASHOK RAMANI - #200020  
 5 710 Sansome Street  
 6 San Francisco, CA 94111-1704  
 7 Telephone: (415) 391-5400  
 8 Facsimile: (415) 397-7188

9 Attorneys for Plaintiff  
 10 NETFLIX, INC.

11 UNITED STATES DISTRICT COURT  
 12  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14

15 NETFLIX, INC., a Delaware corporation,  
 16

17 Plaintiff,  
 18

19 v.  
 20

21 BLOCKBUSTER, INC., a Delaware  
 22 corporation, DOES 1-50,  
 23

24 Defendant.  
 25

26 AND RELATED COUNTERCLAIMS  
 27  
 28

Case No. C 06 2361 WHA (JCS)

**THIRD AMENDED NOTICE OF  
 DEPOSITION OF BLOCKBUSTER, INC.  
 PURSUANT TO FED. R. CIV. P. 30(B)(6)**

Date: April 12, 2007

Time: 9:30 am

Place: Figari & Davenport, LLP  
 3400 Bank of America Plaza  
 901 Main Street  
 Dallas, Texas 75202

Complaint filed: April 4, 2006

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, Netflix, Inc. ("Netflix"), by and through its attorneys, will take the deposition of Blockbuster, Inc. ("Blockbuster"), beginning at 9:30 a.m. on April 12, 2007 and continuing from day to day until completed, except for weekends and holidays. Such deposition will take place at the offices of Figari & Davenport, LLP, 3400 Bank of America Plaza, 901 Main Street, Dallas, Texas 75202, telephone (214) 939-2000, or such other time and place as may be mutually agreed upon by counsel.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Blockbuster is hereby advised that it is required to designate one or more officers, directors, managing agents or other persons who consent and are most knowledgeable to testify on its behalf with respect to the deposition topics described in Schedule A to this Notice of Deposition. The person or persons so designated shall testify as to matters known or reasonably available to Blockbuster.

Blockbuster is requested to identify in writing to Netflix, on or before March 12, 2007, the one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and the subject matters on which each person will testify.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 30(b)(2), the deposition will be taken before a notary public or other officer authorized by the law to administer oaths and will be recorded both stenographically and by sound-and-visual means (i.e., by videotape). Furthermore, provision will be made for real-time monitoring using LiveNote™ or similar means. Netflix reserves the right to use these recordings at the time of trial.

Dated: April 3, 2007

KEKER & VAN NEST, LLP

By: 

KEVIN T. REED  
Attorneys for Plaintiff  
NETFLIX, INC.

**SCHEDULE A****I. DEFINITIONS**

1. "BLOCKBUSTER" means Blockbuster, Inc., and each of its divisions, subsidiaries, departments, predecessor and successor companies, affiliates, parents, any joint venture to which it may be a party, and/or each of its past and present employees, agents, officers, directors, representatives, consultants, accountants and attorneys, including without limitation BLOCKBUSTERONLINE as defined herein.

2. "BLOCKBUSTERONLINE" refers to BLOCKBUSTER'S online rental services, (including, but not limited to, services operated in the United Kingdom), their predecessors (including, but not limited to, Film Caddy and Blockbuster "Rental by Post") and successors.

3. "NETFLIX" as used herein means Netflix, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants and attorneys, including any person who served in any such capacity at any time.

4. "ACCENTURE" as used herein means Accenture, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants and attorneys, including any person who served in any such capacity at any time.

5. "IBM" as used herein means International Business Machines Corporation, its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any joint venture to which it may be a party, and/or each of its employees, agents, officers, directors, representatives, consultants, accountants and attorneys, including any person who served in any such capacity at any time.

6. "IMC2" refers to IMC2 GP LLC (d/b/a IMC<sup>2</sup>), its parents, subsidiaries, divisions, affiliates, assigns, successors, acquired assets, business units, and any present or former officers, directors, trustees, employees, agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act, on its behalf.

7. "MINTER & REID" refers to Minter & Associates, Inc. (d/b/a "Minter & Reid")

1 and/or "The Firestarters"), its parents, subsidiaries, divisions, affiliates, assigns, successors,  
2 acquired assets, business units, and any present or former officers, directors, trustees, employees,  
3 agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act,  
4 on its behalf.

5 8. "PATENTS-IN-SUIT" refers to United States Patent Nos. 7,024,381 and  
6 6,584,450, both individually and collectively.

7 9. "COMMUNICATION" means any provision, receipt, or exchange of any  
8 information in any manner or form, including any oral, telephonic, written, electronic or other  
9 means of communication.

10 10. The connectives "and" and "or" shall be construed either disjunctively or  
11 conjunctively as necessary to bring within the scope of the discovery request all responses that  
12 might otherwise be construed to be outside of its scope.

## 13 II. TOPICS FOR EXAMINATION

14 1. The design, development, and operation of BLOCKBUSTERONLINE.

15 2. The role played by and contributions of any third party in the design,  
16 development, operation, and administration of BLOCKBUSTERONLINE, including without  
17 limitation ACCENTURE, IBM, MINTER & REID, and IMC2.

18 3. Evaluation, analysis, use, and/or testing of NETFLIX by BLOCKBUSTER.

19 4. When and how BLOCKBUSTER first became aware of the PATENTS-IN-SUIT.

20 5. Agreements, including without limitation license agreements, royalty agreements,  
21 indemnification agreements, sales agreements, agreements concerning patents and related  
22 applications, trade secrets, research and development agreements, design agreements, and/or  
23 distribution agreements, and any payments made pursuant to such agreements, that address  
24 BLOCKBUSTERONLINE entered into between BLOCKBUSTER and any person.

25 6. The identities and any competitive analyses of all competitors in the market in  
26 which NETFLIX and BLOCKBUSTER operate.

27 7. Any damages that BLOCKBUSTER contends that it has suffered as a result of  
28 NETFLIX'S acquisition or assertion of either of the PATENTS-IN-SUIT.

1           8.     The efforts undertaken by BLOCKBUSTER to retain and locate documents,  
2 including without limitation email, in support of BLOCKBUSTER'S Fed. R. Civ. P. 26 Initial  
3 Disclosures and in response to NETFLIX'S document requests to BLOCKBUSTER.

4           9.     All COMMUNICATIONS between BLOCKBUSTER and its counsel, including  
5 but not limited to in-house counsel; Alschuler Grossman, LLP and its predecessor firms; Baker  
6 Botts, LLP; Blakely Sokoloff Taylor & Zafman, LLP; and/or Shearman & Sterling, LLP,  
7 regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On April 4, 2007, I served the following document(s):

**THIRD AMENDED NOTICE OF DEPOSITION OF BLOCKBUSTER, INC.  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

by **FACSIMILE TRANSMISSION (PERSONAL) AND UNITED STATES MAIL**, by transmitting via facsimile a true and correct copy on this date. The transmission was reported as complete and without error. Additionally, a true and correct copy was placed in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

Marshall B. Grossman, Esq.  
William J. O'Brien, Esq.  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060  
Fax: 310/907-2033

Executed on April 4, 2007, at San Francisco, California.

I, Diane Blais Miller, declare under penalty of perjury under the laws of the United States that the above is true and correct.

  
DIANE BLAIS MILLER

# **EXHIBIT 2**



04/05/2007 18:18 FAX 415 394 0134

KEKER & VAN NEST LLP

002/051

1 KEKER & VAN NEST, LLP  
JEFFREY R. CHANIN - #103649  
2 DARALYN J. DURIE - #169825  
ASHOK RAMANI - #200020  
3 710 Sansome Street  
San Francisco, CA 94111-1704  
4 Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

5 Attorneys for Plaintiff  
6 NETFLIX, INC.

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9

10 NETFLIX, INC., a Delaware corporation,

11 Plaintiff,

12 v.

13 BLOCKBUSTER, INC., a Delaware  
14 corporation, DOES 1-50,

15 Defendant.

16 AND RELATED COUNTERCLAIMS  
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Case No. C 06 2361 WHA (JCS)

**NOTICE OF DEPOSITION OF  
ALSCHULER GROSSMAN LLP  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

Date: April 23, 2007  
Time: 9:30 a.m.  
Place: Caldwell Leslie Proctor &  
Pettit P.C.  
1000 Wilshire Blvd.  
Suite 600  
Los Angeles, CA 90017

Complaint filed: April 4, 2006

04/05/2007 16:16 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

003/051

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, Netflix, Inc. ("Netflix"), by and through its attorneys, will take the deposition of Alschuler Grossman LLP ("Alschuler"), beginning at 9:30 a.m. on April 23, 2007 and continuing from day to day until completed, except for weekends and holidays. Such deposition will take place at the offices of Caldwell, Leslie, Proctor & Pettit, P.C., 1000 Wilshire Boulevard, Suite 600, Los Angeles, CA 90017, telephone (213) 629-9040, or such other time and place as may be mutually agreed upon by counsel.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Alschuler is hereby advised that it is required to designate one or more officers, directors, managing agents or other persons who consent and are most knowledgeable to testify on its behalf with respect to the deposition topics described in Attachment A to this Notice of Deposition. The person or persons so designated shall testify as to matters known or reasonably available to Alschuler.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 30(b)(2), the deposition will be taken before a notary public or other officer authorized by the law to administer oaths and will be recorded both stenographically and by sound-and-visual means (i.e., by videotape). Furthermore, provision will be made for real-time monitoring using LiveNote™ or similar means. Netflix reserves the right to use these recordings at the time of trial.

A copy of the subpoena for Alschuler Grossman LLP's deposition is attached to this notice. Topics of examination and materials requested prior to the deposition are set forth in Attachment A to the Subpoena.

Dated: April 5, 2007

KEKER &amp; VAN NEST, LLP

By: 

KEVIN T. REED  
Attorneys for Plaintiff  
NETFLIX, INC.

04/05/2007 18:17 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

004/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**  
 CENTRAL DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation

**SUBPOENA IN A CIVIL CASE**

v.  
 BLOCKBUSTER, INC., a Delaware  
 corporation, DOES 1-50

Case Number: C 06 2361 WHA (JCS)  
 United States District Court  
 Northern District of California

TO: Alschuler Grossman LLP  
 1620 26th Street, 4th Floor, North Tower  
 Santa Monica, CA 90404-4060 (310) 907-1000

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Caldwell, Leslie, Proctor & Pettit, P.C. (213) 629-9040  
 1000 Wilshire Blvd., Ste. 600, Los Angeles, CA 90017

DATE AND TIME

April 23, 2007  
 9:30 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attachment A for topics of examination (Exhibit I) and list of requested materials (Exhibit II)

PLACE

Caldwell, Leslie, Proctor & Pettit, P.C.  
 1000 Wilshire Blvd., Ste. 600, Los Angeles, CA 90017  
 (213) 629-9040

DATE AND TIME

April 18, 2007  
 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(8).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorneys for Plaintiff NETFLIX, INC.

April 4, 2007

ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER

KEVIN T. REED, KEKER & VAN NEST LLP, 710 Sansome Street  
 San Francisco, CA 94111 (415) 391-5400

(See Rule 45, Federal Rules of Civil Procedure, pages C &amp; D on reverse)

EXHIBIT

2

PAGE

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KEKER &amp; VAN NEST LLP

005/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:****(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT ADEFINITIONS AND INSTRUCTIONS

1. "YOU," "YOUR," and "ALSCHULER" mean Alschuler Grossman, LLP and any of its domestic and foreign predecessors, successors, parents, subsidiaries, divisions, affiliates, partnerships, joint ventures, or other entities within their operation or control, and their respective present and former general and limited partners, members, managers, officers, directors, employees, attorneys, agents and advisors, and anyone acting on their behalf.
2. "BLOCKBUSTER" means Blockbuster, Inc., its parents, subsidiaries, divisions, affiliates, assigns, successors, acquired assets, business units, and any present or former officers, directors, trustees, employees, agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act, on its behalf.
3. "PATENTS-IN-SUIT" means any of the following, both individually and collectively:
- i. United States Patent No. 7,024,381, entitled "Approach for Renting Items to Customers," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued April 4, 2006, on an application filed May 14, 2003;
  - ii. United States Patent No. 6,584,450, entitled "Method and Apparatus for Renting Items," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued June 24, 2003, on an application filed April 28, 2000;
  - iii. United States Patent Application No. 10/438,727, filed May 14, 2003; and
  - iv. United States Patent Application No. 09/561,041, filed April 28, 2000.
4. "DOCUMENTS" shall have the broadest meaning that Rule 34 of the Federal Rules of Civil Procedure allows, including any writings, drawings, graphs, charts, photographs, phonorecords, tape recordings, notes, diaries, calendars, checkbooks, books, papers, accounts, electronic or videotape recordings, email, and any computer-generated, computer-stored, or electronically-stored matter, and other data compilations from which information can be obtained

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KEKER &amp; VAN NEST LLP

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1 and translated, if necessary, into reasonably useable form, including documents and translated, if  
2 necessary, into reasonably useable form, including documents stored on laptop computers,  
3 personal digital assistants (PDAs), Blackberrys and other similar devices.

4 5. "COMMUNICATION" means any provision, receipt, or exchange of any  
5 information in any manner or form, including any oral, telephonic, written, electronic or other  
6 means of communication.

7 6. "RELATING TO" means in whole or in part constituting, containing,  
8 concerning, discussing, referring, describing, analyzing, identifying, evidencing, or stating.

9 7. The singular form of a word should be interpreted as plural wherever necessary to  
10 bring with the scope of the request any information that might otherwise be construed to be  
11 outside its scope.

12 8. The words "and" and "or" should be construed either disjunctively or  
13 conjunctively wherever necessary to bring within the scope of this request any information that  
14 might otherwise be construed to be outside its scope.

15 9. In responding to these Requests, you are required to furnish all documents that are  
16 available to you, including documents in the possession, custody or control of your attorneys,  
17 officers, agents, employees, accountants, consultants, representatives, or any persons directly or  
18 indirectly employed by or connected with you or your attorneys or anyone else subject to your  
19 control. All documents that are responsive, in whole or in part, to any portion of these Requests  
20 shall be produced in their entirety, including all attachments.

21 10. All documents should be produced as they are kept in the ordinary course of  
22 business or should be organized and labeled to correspond to the specific requests to which they  
23 are responsive. All documents should be produced in any file folder or carton in which they  
24 have been maintained, and should be stored, clipped, stapled, or otherwise arranged in the same  
25 form and manner in which they were found.

26 11. If and to the extent that you object to any request, state with specificity all  
27 grounds for any such objection.  
28

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KEKER & VAN NEST LLP

008/051

1           12. If you assert any claim of privilege to object to any request, and you do not  
2 respond based upon that asserted privilege, state or identify with respect to each such privilege  
3 objection: (a) the privilege upon which you are relying; and (b) with respect to any specific  
4 document(s) as to which you assert a privilege, provide a privilege log corresponding to all such  
5 documents.

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KEKER &amp; VAN NEST LLP

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**EXHIBIT I****MATTERS UPON WHICH EXAMINATION REQUESTED**

Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, you are hereby directed to designate one or more officers, directors, managing agents, or other persons designated by ALSCHULER who consent to testify as to the matters set forth below:

1. All COMMUNICATIONS between ALSCHULER and BLOCKBUSTER regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either ALSCHULER or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

3. The efforts undertaken by ALSCHULER to preserve, retain, and locate DOCUMENTS responsive to this subpoena.

4. The manner of keeping and authenticity of any DOCUMENTS produced pursuant to this subpoena.



04/05/2007 16:17 FAX 415 394 0134

KEKER & VAN NEST LLP

010/051

**EXHIBIT II**

**DOCUMENTS REQUESTED**

1. All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All DOCUMENTS RELATING TO any study, analysis, review, conclusion or opinion (including opinion of counsel) by either ALSCHULER or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT, or to the research, investigation or preparation of any such DOCUMENT.

04/05/2007 16:17 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

011/051

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On April 5, 2007, I served the following document(s):

**NOTICE OF DEPOSITION OF ALSCHULER GROSSMAN LLP  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

by **FACSIMILE TRANSMISSION (PERSONAL) AND UNITED STATES MAIL**, by transmitting via facsimile a true and correct copy on this date. The transmission was reported as complete and without error. Additionally, a true and correct copy was placed in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

William J. O'Brien, Esq.  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060  
Fax: 310/907-2033

Executed on April 5, 2007, at San Francisco, California.

I, Diane Blais Miller, declare under penalty of perjury under the laws of the United States that the above is true and correct.

  
DIANE BLAIS MILLER

# EXHIBIT 3

04/05/2007 16:19 FAX 415 394 0134

KEKER & VAN NEST LLP

022/051

1 KEKER & VAN NEST, LLP  
JEFFREY R. CHANIN - #103649  
2 DARALYN J. DURIE - #169825  
ASHOK RAMANI - #200020  
3 710 Sansome Street  
San Francisco, CA 94111-1704  
4 Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

5 Attorneys for Plaintiff  
6 NETFLIX, INC.

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9

10 NETFLIX, INC., a Delaware corporation,  
11 Plaintiff,

12 v.

13 BLOCKBUSTER, INC., a Delaware  
14 corporation, DOES 1-50,  
15 Defendant.

16 AND RELATED COUNTERCLAIMS  
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Case No. C 06 2361 WHA (JCS)

**NOTICE OF DEPOSITION OF  
SHEARMAN & STERLING, LLP  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

Date: April 25, 2007  
Time: 9:30 a.m.  
Place: Cooley Godward Kronish LLP  
1114 Avenue of the Americas  
46<sup>th</sup> Floor  
New York, NY 10036

Complaint filed: April 4, 2006

04/05/2007 16:19 FAX 415 394 0134

KEKER &amp; VAN NEST LLP.

023/051

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, Netflix, Inc. ("Netflix"), by and through its attorneys, will take the deposition of Shearman & Sterling, LLP ("Shearman"), beginning at 9:30 a.m. on April 25, 2007 and continuing from day to day until completed, except for weekends and holidays. Such deposition will take place at the offices of Cooley Godward Kronish LLP, 1114 Avenue of the Americas, 46<sup>th</sup> Floor, New York, NY 10036, telephone (212) 479-6610, or such other time and place as may be mutually agreed upon by counsel.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Shearman is hereby advised that it is required to designate one or more officers, directors, managing agents or other persons who consent and are most knowledgeable to testify on its behalf with respect to the deposition topics described in Attachment A to this Notice of Deposition. The person or persons so designated shall testify as to matters known or reasonably available to Shearman.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 30(b)(2), the deposition will be taken before a notary public or other officer authorized by the law to administer oaths and will be recorded both stenographically and by sound-and-visual means (i.e., by videotape). Furthermore, provision will be made for real-time monitoring using LiveNote™ or similar means. Netflix reserves the right to use these recordings at the time of trial.

A copy of the subpoena for Shearman & Sterling, LLP's deposition is attached to this notice. Topics of examination and materials requested prior to the deposition are set forth in Attachment A to the Subpoena.

Dated: April 5, 2007

KEKER &amp; VAN NEST, LLP

By: 

KEVIN T. REED  
Attorneys for Plaintiff  
NETFLIX, INC.

04/05/2007 16:19 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

024/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**  
 SOUTHERN DISTRICT OF NEW YORK

NETFLIX, INC., a Delaware corporation

**SUBPOENA IN A CIVIL CASE**

v.  
 BLOCKBUSTER, INC., a Delaware  
 corporation, DOES 1-50

Case Number: C 06 2361 WHA (JCS)  
 United States District Court  
 Northern District of California

TO: Shearman & Sterling  
 599 Lexington Avenue  
 New York, NY 10022 (212) 848-4000

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Cooley Godward Kronish LLP, 1114 Avenue of the Americas, 46th Fl., New York, NY 10036 (212) 479-6610	DATE AND TIME April 25, 2007 9:30 a.m.
---	--

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attachment A for topics of examination (Exhibit I) and list of requested materials (Exhibit II)

PLACE Cooley Godward Kronish LLP, 1114 Avenue of the Americas, 46th Fl., New York, NY 10036 (212) 479-6610	DATE AND TIME April 18, 2007 10:00 a.m.
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorneys for Plaintiff <del>NETFLIX, INC.</del>	DATE April 4, 2007
ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER KEVIN T. REED, KEKER & VAN NEST LLP, 710 Sansome Street San Francisco, CA 94111 (415) 391-5400	

(See Rule 45, Federal Rules of Civil Procedure, parts C &amp; D on reverse)

EXHIBIT 3 PAGE 24

04/05/2007 16:19 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

025/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:****(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

04/05/2007 16:20 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

028/051

ATTACHMENT ADEFINITIONS AND INSTRUCTIONS

1. "YOU," "YOUR," and "SHEARMAN" mean Shearman & Sterling, LLP and any of its domestic and foreign predecessors, successors, parents, subsidiaries, divisions, affiliates, partnerships, joint ventures, or other entities within their operation or control, and their respective present and former general and limited partners, members, managers, officers, directors, employees, attorneys, agents and advisors, and anyone acting on their behalf.

2. "BLOCKBUSTER" means Blockbuster, Inc., its parents, subsidiaries, divisions, affiliates, assigns, successors, acquired assets, business units, and any present or former officers, directors, trustees, employees, agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act, on its behalf.

3. "PATENTS-IN-SUIT" means any of the following, both individually and collectively:

i. United States Patent No. 7,024,381, entitled "Approach for Renting Items to Customers," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued April 4, 2006, on an application filed May 14, 2003;

ii. United States Patent No. 6,584,450, entitled "Method and Apparatus for Renting Items," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued June 24, 2003, on an application filed April 28, 2000;

iii. United States Patent Application No. 10/438,727, filed May 14, 2003; and

iv. United States Patent Application No. 09/561,041, filed April 28, 2000.

4. "DOCUMENTS" shall have the broadest meaning that Rule 34 of the Federal Rules of Civil Procedure allows, including any writings, drawings, graphs, charts, photographs, phonorecords, tape recordings, notes, diaries, calendars, checkbooks, books, papers, accounts, electronic or videotape recordings, email, and any computer-generated, computer-stored, or electronically-stored matter, and other data compilations from which information can be obtained



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KEKER &amp; VAN NEST LLP

027/051

1 and translated, if necessary, into reasonably useable form, including documents and translated, if  
2 necessary, into reasonably useable form, including documents stored on laptop computers,  
3 personal digital assistants (PDAs), Blackberrys and other similar devices.

4 5. "COMMUNICATION" means any provision, receipt, or exchange of any  
5 information in any manner or form, including any oral, telephonic, written, electronic or other  
6 means of communication.

7 6. "RELATING TO" means in whole or in part constituting, containing,  
8 concerning, discussing, referring, describing, analyzing, identifying, evidencing, or stating.

9 7. The singular form of a word should be interpreted as plural wherever necessary to  
10 bring with the scope of the request any information that might otherwise be construed to be  
11 outside its scope.

12 8. The words "and" and "or" should be construed either disjunctively or  
13 conjunctively wherever necessary to bring within the scope of this request any information that  
14 might otherwise be construed to be outside its scope.

15 9. In responding to these Requests, you are required to furnish all documents that are  
16 available to you, including documents in the possession, custody or control of your attorneys,  
17 officers, agents, employees, accountants, consultants, representatives, or any persons directly or  
18 indirectly employed by or connected with you or your attorneys or anyone else subject to your  
19 control. All documents that are responsive, in whole or in part, to any portion of these Requests  
20 shall be produced in their entirety, including all attachments.

21 10. All documents should be produced as they are kept in the ordinary course of  
22 business or should be organized and labeled to correspond to the specific requests to which they  
23 are responsive. All documents should be produced in any file folder or carton in which they  
24 have been maintained, and should be stored, clipped, stapled, or otherwise arranged in the same  
25 form and manner in which they were found.

26 11. If and to the extent that you object to any request, state with specificity all  
27 grounds for any such objection.  
28

1           12. If you assert any claim of privilege to object to any request, and you do not  
2 respond based upon that asserted privilege, state or identify with respect to each such privilege  
3 objection: (a) the privilege upon which you are relying; and (b) with respect to any specific  
4 document(s) as to which you assert a privilege, provide a privilege log corresponding to all such  
5 documents.

04/05/2007 16:20 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

029/051

**EXHIBIT I****MATTERS UPON WHICH EXAMINATION REQUESTED**

Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, you are hereby directed to designate one or more officers, directors, managing agents, or other persons designated by SHEARMAN who consent to testify as to the matters set forth below:

1. All COMMUNICATIONS between SHEARMAN and BLOCKBUSTER regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either SHEARMAN or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

3. The efforts undertaken by SHEARMAN to preserve, retain, and locate DOCUMENTS responsive to this subpoena.

4. The manner of keeping and authenticity of any DOCUMENTS produced pursuant to this subpoena.

04/05/2007 16:20 FAX 415 394 0134

KEKER & VAN NEST LLP

030/051

**EXHIBIT II**

**DOCUMENTS REQUESTED**

1. All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All DOCUMENTS RELATING TO any study, analysis, review, conclusion or opinion (including opinion of counsel) by either SHEARMAN or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT, or to the research, investigation or preparation of any such DOCUMENT.

04/05/2007 16:20 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

031/051

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Kecker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On April 5, 2007, I served the following document(s):

**NOTICE OF DEPOSITION OF SHEARMAN & STERLING  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

by **FACSIMILE TRANSMISSION (PERSONAL) AND UNITED STATES MAIL**, by transmitting via facsimile a true and correct copy on this date. The transmission was reported as complete and without error. Additionally, a true and correct copy was placed in a sealed envelope addressed as shown below. I am readily familiar with the practice of Kecker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

William J. O'Brien, Esq.  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060  
Fax: 310/907-2033

Executed on April 5, 2007, at San Francisco, California.

I, Diane Blais Miller, declare under penalty of perjury under the laws of the United States that the above is true and correct.

  
DIANE BLAIS MILLER

# **EXHIBIT 4**

04/05/2007 16:18 FAX 415 394 0134

KEKER & VAN NEST LLP

012/051

1 KEKER & VAN NEST, LLP  
JEFFREY R. CHANIN - #103649  
2 DARALYN J. DURIE - #169825  
ASHOK RAMANI - #200020  
3 710 Sansome Street  
San Francisco, CA 94111-1704  
4 Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

5 Attorneys for Plaintiff  
6 NETFLIX, INC.

7 UNITED STATES DISTRICT COURT  
8  
9 NORTHERN DISTRICT OF CALIFORNIA

10 NETFLIX, INC., a Delaware corporation,

11 Plaintiff,

12 v.

13 BLOCKBUSTER, INC., a Delaware  
14 corporation, DOES 1-50,

15 Defendant.

16 AND RELATED COUNTERCLAIMS  
17  
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Case No. C 06 2361 WHA (JCS)

**NOTICE OF DEPOSITION OF BAKER  
BOTT, LLP PURSUANT TO FED. R.  
CIV. P. 30(B)(6)**

Date: April 24, 2007  
Time: 9:30 a.m.  
Place: Figari & Davenport LLP  
3400 Bank of America Plaza  
901 Main Street  
Dallas, TX 75202

Complaint filed: April 4, 2006

04/05/2007 16:18 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

013/051

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, Netflix, Inc. ("Netflix"), by and through its attorneys, will take the deposition of Baker Botts, LLP ("Baker"), beginning at 9:30 a.m. on April 24, 2007 and continuing from day to day until completed, except for weekends and holidays. Such deposition will take place at the offices of Figari & Davenport, LLP, 3400 Bank of America Plaza, 901 Main Street, Dallas, TX 75202, telephone (214) 939-2000, or such other time and place as may be mutually agreed upon by counsel.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Alschuler is hereby advised that it is required to designate one or more officers, directors, managing agents or other persons who consent and are most knowledgeable to testify on its behalf with respect to the deposition topics described in Attachment A to this Notice of Deposition. The person or persons so designated shall testify as to matters known or reasonably available to Baker.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 30(b)(2), the deposition will be taken before a notary public or other officer authorized by the law to administer oaths and will be recorded both stenographically and by sound-and-visual means (i.e., by videotape). Furthermore, provision will be made for real-time monitoring using LiveNote™ or similar means. Netflix reserves the right to use these recordings at the time of trial.

A copy of the subpoena for Baker Botts, LLP's deposition is attached to this notice. Topics of examination and materials requested prior to the deposition are set forth in Attachment A to the Subpoena.

Dated: April 5, 2007

KEKER & VAN NEST, LLP

By: 

KEVIN T. REED  
Attorneys for Plaintiff  
NETFLIX, INC.



04/05/2007 16:18 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

014/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

Issued by the

## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

NETFLIX, INC., a Delaware corporation

## SUBPOENA IN A CIVIL CASE

v.  
BLOCKBUSTER, INC., a Delaware  
corporation, DOES 1-50

Case Number: C 06 2361 WHA (JCS)  
United States District Court  
Northern District of California

TO: Baker Botts, LLP  
2001 Ross Avenue  
Dallas, Texas 75201-2980; 214.953.6500

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Figari & Davenport, LLP, 3400 Bank of America Plaza,  
901 Main Street, Dallas, Texas 75202, telephone (214) 939-2000

DATE AND TIME

April 24, 2007  
9:30 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See Attachment A for topics of examination (Exhibit I) and list of requested materials (Exhibit II).

PLACE

Figari & Davenport, LLP, 3400 Bank of America Plaza,  
901 Main Street, Dallas, Texas 75202, telephone  
(214) 939-2000

DATE AND TIME

April 18, 2007  
10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorneys for Plaintiff NETFLIX, INC.

April 3 2007

ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER

KEVIN T. REED, KEKER & VAN NEST, 710 Sansome Street, San Francisco, CA 94111  
(415) 391-5400

(See Rule 45 Federal Rules of Civil Procedure, parts C &amp; D on responses)

EXHIBIT 4 PAGE 34

04/05/2007 16:18 FAX 415 394 0134

KEKER &amp; VAN NEST, LLP

015/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:****(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

04/05/2007 16:18 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

0106/051

**ATTACHMENT A****DEFINITIONS AND INSTRUCTIONS**

1. "YOU," "YOUR," and "BAKER BOTTS" mean Baker Botts, LLP and any of its domestic and foreign predecessors, successors, parents, subsidiaries, divisions, affiliates, partnerships, joint ventures, or other entities within their operation or control, and their respective present and former general and limited partners, members, managers, officers, directors, employees, attorneys, agents and advisors, and anyone acting on their behalf.

2. "BLOCKBUSTER" means Blockbuster, Inc., its parents, subsidiaries, divisions, affiliates, assigns, successors, acquired assets, business units, and any present or former officers, directors, trustees, employees, agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act, on its behalf.

3. "PATENTS-IN-SUIT" means any of the following, both individually and collectively:

- i. United States Patent No. 7,024,381, entitled "Approach for Renting Items to Customers," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued April 4, 2006, on an application filed May 14, 2003;
- ii. United States Patent No. 6,584,450, entitled "Method and Apparatus for Renting Items," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued June 24, 2003, on an application filed April 28, 2000;
- iii. United States Patent Application No. 10/438,727, filed May 14, 2003; and
- iv. United States Patent Application No. 09/561,041, filed April 28, 2000.

4. "DOCUMENTS" shall have the broadest meaning that Rule 34 of the Federal Rules of Civil Procedure allows, including any writings, drawings, graphs, charts, photographs, phonorecords, tape recordings, notes, diaries, calendars, checkbooks, books, papers, accounts, electronic or videotape recordings, email, and any computer-generated, computer-stored, or electronically-stored matter, and other data compilations from which information can be obtained

1 and translated, if necessary, into reasonably useable form, including documents and translated, if  
2 necessary, into reasonably useable form, including documents stored on laptop computers,  
3 personal digital assistants (PDAs), Blackberrys and other similar devices.

4 5. "COMMUNICATION" means any provision, receipt, or exchange of any  
5 information in any manner or form, including any oral, telephonic, written, electronic or other  
6 means of communication.

7 6. "RELATING TO" means in whole or in part constituting, containing,  
8 concerning, discussing, referring, describing, analyzing, identifying, evidencing, or stating.

9 7. The singular form of a word should be interpreted as plural wherever necessary to  
10 bring with the scope of the request any information that might otherwise be construed to be  
11 outside its scope.

12 8. The words "and" and "or" should be construed either disjunctively or  
13 conjunctively wherever necessary to bring within the scope of this request any information that  
14 might otherwise be construed to be outside its scope.

15 9. In responding to these Requests, you are required to furnish all documents that are  
16 available to you, including documents in the possession, custody or control of your attorneys,  
17 officers, agents, employees, accountants, consultants, representatives, or any persons directly or  
18 indirectly employed by or connected with you or your attorneys or anyone else subject to your  
19 control. All documents that are responsive, in whole or in part, to any portion of these Requests  
20 shall be produced in their entirety, including all attachments.

21 10. All documents should be produced as they are kept in the ordinary course of  
22 business or should be organized and labeled to correspond to the specific requests to which they  
23 are responsive. All documents should be produced in any file folder or carton in which they  
24 have been maintained, and should be stored, clipped, stapled, or otherwise arranged in the same  
25 form and manner in which they were found.

26 11. If and to the extent that you object to any request, state with specificity all  
27 grounds for any such objection.

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04/05/2007 16:19 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

018/051

1           12. If you assert any claim of privilege to object to any request, and you do not  
2 respond based upon that asserted privilege, state or identify with respect to each such privilege  
3 objection: (a) the privilege upon which you are relying; and (b) with respect to any specific  
4 document(s) as to which you assert a privilege, provide a privilege log corresponding to all such  
5 documents.

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**EXHIBIT I****MATTERS UPON WHICH EXAMINATION REQUESTED**

Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, you are hereby directed to designate one or more officers, directors, managing agents, or other persons designated by BAKER BOTTS who consent to testify as to the matters set forth below:

1. All COMMUNICATIONS between BAKER BOTTS and BLOCKBUSTER regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either BAKER BOTTS or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

3. The efforts undertaken by BAKER BOTTS to preserve, retain, and locate DOCUMENTS responsive to this subpoena.

4. The manner of keeping and authenticity of any DOCUMENTS produced pursuant to this subpoena.

**EXHIBIT II**

**DOCUMENTS REQUESTED**

1  
2  
3 1. All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity  
4 or invalidity of any claim of either of the PATENTS-IN-SUIT.

5 2. All DOCUMENTS RELATING TO any study, analysis, review, conclusion or  
6 opinion (including opinion of counsel) by either BAKER BOTTS or any other PERSON,  
7 whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-  
8 IN-SUIT, or to the research, investigation or preparation of any such DOCUMENT.  
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**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On April 5, 2007, I served the following document(s):

**NOTICE OF DEPOSITION OF BAKER BOTTS LLP  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

by **FACSIMILE TRANSMISSION (PERSONAL) AND UNITED STATES MAIL**, by transmitting via facsimile a true and correct copy on this date. The transmission was reported as complete and without error. Additionally, a true and correct copy was placed in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

William J. O'Brien, Esq.  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060  
Fax: 310/907-2033

Executed on April 5, 2007, at San Francisco, California.

I, Diane Blais Miller, declare under penalty of perjury under the laws of the United States that the above is true and correct.

  
DIANE BLAIS MILLER



# EXHIBIT 5

04/05/2007 16:20 FAX 415 394 0134

KEKER & VAN NEST LLP

032/051

1 KEKER & VAN NEST, LLP  
 2 JEFFREY R. CHANIN - #103649  
 3 DARALYN J. DURIE - #169825  
 4 ASHOK RAMANI - #200020  
 5 710 Sansome Street  
 6 San Francisco, CA 94111-1704  
 7 Telephone: (415) 391-5400  
 8 Facsimile: (415) 397-7188

9 Attorneys for Plaintiff  
 10 NETFLIX, INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13

14 NETFLIX, INC., a Delaware corporation,  
 15 Plaintiff,

16 v.

17 BLOCKBUSTER, INC., a Delaware  
 18 corporation, DOES 1-50,  
 19 Defendant.

20 AND RELATED COUNTERCLAIMS  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

Case No. C 06 2361 WHA (JCS)

**NOTICE OF DEPOSITION OF  
 BLAKELY, SOKOLOFF, TAYLOR &  
 ZAFMAN, LLP PURSUANT TO FED. R.  
 CIV. P. 30(B)(6)**

Date: April 26, 2007  
 Time: 9:30 a.m.  
 Place: Caldwell Leslie Proctor &  
 Pettit P.C.  
 1000 Wilshire Blvd.  
 Suite 600  
 Los Angeles, CA 90017

Complaint filed: April 4, 2006

04/05/2007 16:20 FAX 415 394 0134

KEKER &amp; VAN NEST, LLP

033/051

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, Netflix, Inc. ("Netflix"), by and through its attorneys, will take the deposition of Blakely, Sokoloff Taylor & Zafman LLP ("Blakely"), beginning at 9:30 a.m. on April 26, 2007 and continuing from day to day until completed, except for weekends and holidays. Such deposition will take place at the offices of Caldwell, Leslie, Proctor & Pettit, P.C., 1000 Wilshire Boulevard, Suite 600, Los Angeles, CA 90017, telephone (213) 629-9040, or such other time and place as may be mutually agreed upon by counsel.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Blakely is hereby advised that it is required to designate one or more officers, directors, managing agents or other persons who consent and are most knowledgeable to testify on its behalf with respect to the deposition topics described in Attachment A to this Notice of Deposition. The person or persons so designated shall testify as to matters known or reasonably available to Blakely.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Federal Rule of Civil Procedure 30(b)(2), the deposition will be taken before a notary public or other officer authorized by the law to administer oaths and will be recorded both stenographically and by sound-and-visual means (i.e., by videotape). Furthermore, provision will be made for real-time monitoring using LiveNote™ or similar means. Netflix reserves the right to use these recordings at the time of trial.

A copy of the subpoena for Blakely, Sokoloff Taylor & Zafman LLP's deposition is attached to this notice. Topics of examination and materials requested prior to the deposition are set forth in Attachment A to the Subpoena.

Dated: April 5, 2007

KEKER &amp; VAN NEST, LLP

By: 

KEVIN T. REED  
Attorneys for Plaintiff  
NETFLIX, INC.

04/05/2007 16:21 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

034/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**  
 CENTRAL DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation

**SUBPOENA IN A CIVIL CASE**

v.  
 BLOCKBUSTER, INC., a Delaware  
 corporation, DOES 1-50

Case Number: C 06 2361 WHA (JCS)  
 United States District Court  
 Northern District of California

TO: Blakely, Sokoloff Taylor & Zafman, LLP  
 12400 Wilshire Blvd., Seventh Floor  
 Los Angeles, CA 90025-1030; (310) 207-3800

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Caldwell, Leslie, Proctor & Pettit, P.C. (213) 629-9040  
 1000 Wilshire Blvd., Ste. 600, Los Angeles, CA 90017

DATE AND TIME

April 26, 2007  
 9:30 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attachment A for topics of examination (Exhibit I) and list of requested materials (Exhibit II)

PLACE

Caldwell, Leslie, Proctor & Pettit, P.C.  
 1000 Wilshire Blvd., Ste. 600, Los Angeles, CA 90017  
 (213) 629-9040

DATE AND TIME

April 18, 2007  
 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Attorneys for Plaintiff NETFLIX, INC.

April 4, 2007

ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER

KEVIN T. REED, KEKER & VAN NEST LLP, 710 Sansome Street  
 San Francisco, CA 94111 (415) 391-5400

(See Rule 45, Federal Rules of Civil Procedure, parts C &amp; D on reverse)

EXHIBIT 5 PAGE 44

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KEKER &amp; VAN NEST LLP

035/051

AO 88 (Rev. 11/94) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

## SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

## Rule 45, Federal Rules of Civil Procedure, Parts C &amp; D:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

04/05/2007 16:21 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

036/051

ATTACHMENT ADEFINITIONS AND INSTRUCTIONS

1. "YOU," "YOUR," and "BLAKELY" mean Blakely Sokoloff Taylor & Zafman, LLP, and any of its domestic and foreign predecessors, successors, parents, subsidiaries, divisions, affiliates, partnerships, joint ventures, or other entities within their operation or control, and their respective present and former general and limited partners, members, managers, officers, directors, employees, attorneys, agents and advisors, and anyone acting on their behalf.

2. "BLOCKBUSTER" means Blockbuster, Inc., its parents, subsidiaries, divisions, affiliates, assigns, successors, acquired assets, business units, and any present or former officers, directors, trustees, employees, agents, representatives, attorneys, associates, and/or all other persons acting, or purporting to act, on its behalf.

3. "PERSON" means individual, individuals, entity, or entities, including, but not limited to, firms, associations, organizations, corporations, partnerships, joint ventures, trusts, or other collective organization or entity, any federal, state, or local government or governmental agency, and any foreign government or foreign government agency or other organization recognizable at law, and the "acts" of a person, are defined to include the acts of directors, officers, owners, members, employees, agents or attorneys acting on the person's behalf.

4. "PATENTS-IN-SUIT" means any of the following, both individually and collectively:

- i. United States Patent No. 7,024,381, entitled "Approach for Renting Items to Customers," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued April 4, 2006, on an application filed May 14, 2003;
- ii. United States Patent No. 6,584,450, entitled "Method and Apparatus for Renting Items," which names as inventors W. Reed Hastings, Marc B. Randolph, and Neil Duncan Hunt, issued June 24, 2003, on an application filed April 28, 2000;

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KEKER &amp; VAN NEST LLP

037/051

1                   iii. United States Patent Application No. 10/438,727, filed May 14, 2003; and

2                   iv. United States Patent Application No. 09/561,041, filed April 28, 2000.

3           5.       "DOCUMENTS" shall have the broadest meaning that Rule 34 of the Federal  
4 Rules of Civil Procedure allows, including any writings, drawings, graphs, charts, photographs,  
5 phonorecords, tape recordings, notes, diaries, calendars, checkbooks, books, papers, accounts,  
6 electronic or videotape recordings, email, and any computer-generated, computer-stored, or  
7 electronically-stored matter, and other data compilations from which information can be obtained  
8 and translated, if necessary, into reasonably useable form, including documents and translated, if  
9 necessary, into reasonably useable form, including documents stored on laptop computers,  
10 personal digital assistants (PDAs), Blackberrys and other similar devices.

11           6.       "COMMUNICATION" means any provision, receipt, or exchange of any  
12 information in any manner or form, including any oral, telephonic, written, electronic or other  
13 means of communication.

14           7.       "RELATING TO" means in whole or in part constituting, containing,  
15 concerning, discussing, referring, describing, analyzing, identifying, evidencing, or stating.

16           8.       The singular form of a word should be interpreted as plural wherever necessary to  
17 bring with the scope of the request any information that might otherwise be construed to be  
18 outside its scope.

19           9.       The words "and" and "or" should be construed either disjunctively or  
20 conjunctively wherever necessary to bring within the scope of this request any information that  
21 might otherwise be construed to be outside its scope.

22           10.      In responding to these Requests, you are required to furnish all documents that are  
23 available to you, including documents in the possession, custody or control of your attorneys,  
24 officers, agents, employees, accountants, consultants, representatives, or any persons directly or  
25 indirectly employed by or connected with you or your attorneys or anyone else subject to your  
26 control. All documents that are responsive, in whole or in part, to any portion of these Requests  
27 shall be produced in their entirety, including all attachments.

28           11.      All documents should be produced as they are kept in the ordinary course of

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KEKER &amp; VAN NEST LLP

038/051

1 business or should be organized and labeled to correspond to the specific requests to which they  
2 are responsive. All documents should be produced in any file folder or carton in which they  
3 have been maintained, and should be stored, clipped, stapled, or otherwise arranged in the same  
4 form and manner in which they were found.

5 12. If and to the extent that you object to any request, state with specificity all  
6 grounds for any such objection.

7 13. If you assert any claim of privilege to object to any request, and you do not  
8 respond based upon that asserted privilege, state or identify with respect to each such privilege  
9 objection: (a) the privilege upon which you are relying; and (b) with respect to any specific  
10 document(s) as to which you assert a privilege, provide a privilege log corresponding to all such  
11 documents.



04/05/2007 16:21 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

039/051

EXHIBIT IMATTERS UPON WHICH EXAMINATION REQUESTED

Pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure, you are hereby directed to designate one or more officers, directors, managing agents, or other persons designated by BLAKELY who consent to testify as to the matters set forth below:

1. All COMMUNICATIONS between BLAKELY and BLOCKBUSTER regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either BLAKELY or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

3. The efforts undertaken by BLAKELY to preserve, retain, and locate DOCUMENTS responsive to this subpoena.

4. The manner of keeping and authenticity of any DOCUMENTS produced pursuant to this subpoena.

04/05/2007 16:21 FAX 415 394 0134

KEKER & VAN NEST LLP

040/051

**EXHIBIT II**

**DOCUMENTS REQUESTED**

1. All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

2. All DOCUMENTS RELATING TO any study, analysis, review, conclusion or opinion (including opinion of counsel) by either BLAKELY or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT, or to the research, investigation or preparation of any such DOCUMENT.

04/05/2007 16:22 FAX 415 394 0134

KEKER &amp; VAN NEST LLP

041/051

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

On April 5, 2007, I served the following document(s):

**NOTICE OF DEPOSITION OF BLAKELY, SOKOLOFF TAYLOR & ZAFMAN LLP  
PURSUANT TO FED. R. CIV. P. 30(B)(6)**

by **FACSIMILE TRANSMISSION (PERSONAL) AND UNITED STATES MAIL**, by transmitting via facsimile a true and correct copy on this date. The transmission was reported as complete and without error. Additionally, a true and correct copy was placed in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing. According to that practice, items are deposited with the United States Postal Service at San Francisco, California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

William J. O'Brien, Esq.  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060  
Fax: 310/907-2033

Executed on April 5, 2007, at San Francisco, California.

I, Diane Blais Miller, declare under penalty of perjury under the laws of the United States that the above is true and correct.

  
DIANE BLAIS MILLER

# **EXHIBIT 6**

4/18/07

BINGHAM McCUTCHEN LLP  
 Donn P. Pickett (Bar No. 72257)  
 Adrienne L. Taclas (Bar No. 211232)  
 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 Telephone: 415.393.2000  
 Facsimile: 415.393.2286

BINGHAM McCUTCHEN LLP  
 Mary T. Huser (Bar No. 136051)  
 1900 University Avenue  
 East Palo Alto, CA 94303-2223  
 Telephone: 650.849.4400  
 Facsimile: 650.849.4800

ALSCHULER GROSSMAN LLP  
 Marshall B. Grossman (No. 35958)  
 William J. O'Brien (No. 99526)  
 Tony D. Chen (No. 176635)  
 Dominique N. Thomas (No. 231464)  
 The Water Garden  
 1620 26th Street  
 Fourth Floor, North Tower  
 Santa Monica, CA 90404-4060  
 Telephone: 310-907-1000  
 Facsimile: 310-907-2000

Attorneys for Defendant and Counterclaimant  
 BLOCKBUSTER INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation,

Plaintiff,

v.

BLOCKBUSTER INC., a Delaware corporation,  
 DOES 1-50,

Defendant.

Case No. C 06 2361 WHA (JCS)

**OBJECTIONS AND RESPONSES  
 OF NON-PARTY ALSCHULER  
 GROSSMAN LLP**

AND RELATED COUNTER ACTION

SF/21709966.1/3006338-0000325413

1 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Alschuler Grossman  
2 LLP ("Alschuler") hereby objects and responds to Plaintiff and Counter-Defendant Netflix,  
3 Inc.'s ("Netflix") subpoena dated April 4, 2007 ("Subpoena") as follows:

4 **GENERAL OBJECTIONS**

5 1. Alschuler objects to the Subpoena to the extent that it seeks information or  
6 documents that are protected by the attorney-client privilege or the attorney work product  
7 doctrine, that were prepared in anticipation of litigation, that constitute or disclose mental  
8 impressions, conclusions, opinions, or legal theories of any attorney of Alschuler concerning this  
9 or any other litigation, that are protected by the privilege of self-critical analyses, any pertinent  
10 statutes dealing with privacy rights, or by any other privilege or doctrine. Such documents will  
11 not be produced.

12 2. Alschuler objects to the Subpoena to the extent that it is overbroad as to  
13 subject matter and time frame, vague, ambiguous, capable of multiple interpretations, and  
14 otherwise seeks documents that are not relevant to the claims or defenses in this action or  
15 calculated to lead to the discovery of admissible evidence.

16 3. Alschuler objects to the Subpoena to the extent that it imposes an undue  
17 burden and expense.

18 4. Alschuler objects to the Subpoena to the extent that it purports to require  
19 Alschuler to produce documents outside its possession, custody or control.

20 5. Alschuler objects to the Subpoena to the extent that it purports to impose  
21 obligations greater than those imposed by the Federal Rules of Civil Procedure and the Local  
22 Rules of the United States District Court for the Central District of California.

23 6. The specific responses set forth below are based upon information now  
24 available to Alschuler, and Alschuler reserves the right at any time to amend or supplement these  
25 responses and objections.

26 7. Any response or objection to the Subpoena does not necessarily mean that  
27 any documents exist or are in the possession, custody, or control of Alschuler that are responsive  
28 to any specific category of documents demanded by the Subpoena.

SF/21709966.1/3006338-0000325413

1           8.       Alschuler objects to the definitions of "You," "Your," and "Alschuler" on  
2 the grounds that they are vague and overbroad. Alschuler will construe the terms "You,"  
3 "Your," and "Alschuler" to refer to Alschuler and its partners and employees who records show  
4 were involved in matters relevant to this action.

5           9.       The objections set forth above are hereby incorporated in each specific  
6 response set forth below, as if fully set forth therein, and shall be deemed to be continuing even  
7 though not specifically referred to. No such objection is waived by Alschuler responding to a  
8 Request in whole or in part.

9  
10           **SPECIFIC RESPONSES AND OBJECTIONS TO EXAMINATION TOPICS**

11           **Examination Request No. 1:**

12           All COMMUNICATIONS between ALSCHULER and BLOCKBUSTER  
13 regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

14           **Response to Request No. 1:**

15           Alschuler objects to this Request to the extent that it seeks information that is  
16 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
17 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,  
18 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
19 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
20 evidence.

21           **Examination Request No. 2:**

22           All studies, analyses, reviews, conclusions or opinions (including opinion of  
23 counsel) by either ALSCHULER or any other PERSON, whether written or oral, as to the  
24 validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

25           **Response to Request No. 2:**

26           Alschuler objects to this Request to the extent that it seeks information that is  
27 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
28 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,

SF/21709966.1/3006338-0000325413

1 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
 2 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
 3 evidence.

4 **Examination Request No. 3:**

5 The efforts undertaken by ALSCHULER to preserve, retain, and locate  
 6 DOCUMENTS responsive to this subpoena.

7 **Response to Request No. 3:**

8 Alschuler objects to this Request to the extent that it seeks information that is  
 9 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
 10 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,  
 11 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
 12 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
 13 evidence.

14 **Examination Request No. 4:**

15 The manner of keeping and authenticity of any DOCUMENTS produced pursuant  
 16 to this subpoena.

17 **Response to Request No. 4:**

18 Alschuler objects to this Request to the extent that it seeks information that is  
 19 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
 20 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,  
 21 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
 22 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
 23 evidence.

24  
 25 **SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

26 **Document Request No. 1:**

27 All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity  
 28 or invalidity of any claim of either of the PATENTS-IN-SUIT.

SF/21709966.1/3006338-0000325413



1                   **Response to Request No. 1:**

2                   Alschuler objects to this Request to the extent that it seeks documents that are  
3 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
4 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,  
5 ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant  
6 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
7 evidence. Alschuler also objects to this Request as seeking information already within the  
8 possession, custody or control of Netflix and to the extent that such information has already been  
9 produced to Netflix.

10                   **Document Request No. 2:**

11                   ALL DOCUMENTS RELATING TO any study, analysis, review, conclusion or  
12 opinion (including opinion of counsel) by either ALSCHULER or any other PERSON, whether  
13 written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT,  
14 or to the research, investigation or preparation of any such DOCUMENT.

15                   **Response to Request No. 2 :**

16                   Alschuler objects to this Request to the extent that it seeks documents that are  
17 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
18 privilege or doctrine. Alschuler further objects to this Request on the grounds that it is vague,  
19 ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant  
20 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
21 evidence. Alschuler also objects to this Request as seeking information already within the  
22 possession, custody or control of Netflix and to the extent that such information has already been  
23 produced to Netflix.

1 DATED: April 18, 2007

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Bingham McCutchen LLP

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By:

*Donn P. Pickett*

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Donn P. Pickett  
Attorneys for Defendant and Counterclaimant  
Blockbuster Inc.

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EXHIBIT 6 PAGE 57

**PROOF OF SERVICE**

I am over eighteen years of age, not a party in this action, and employed in San Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited that same day in the ordinary course of business.

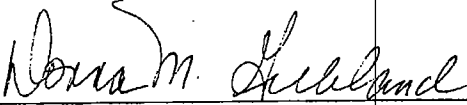
On April 18, 2007, I served the attached:

**OBJECTIONS AND RESPONSES OF NON-PARTY  
ALSCHULER GROSSMAN LLP**

- ☒ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.
- ☐ (EXPRESS MAIL/OVERNIGHT DELIVERY) by causing a true and correct copy of the document(s) listed above to be delivered by \_\_\_\_\_ in sealed envelope(s) with all fees prepaid at the address(es) set forth below.
- ☐ (PERSONAL SERVICE) by causing a true and correct copy of the above documents to be hand delivered in sealed envelope(s) with all fees fully paid to the person(s) at the address(es) set forth below.

Jeffrey R. Chanin, Esq.  
Daralyn J. Durie, Esq.  
Eugene M. Paige, Esq.  
Kevin T. Reed, Esq.  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Phone: 415.391.5400  
Fax: 415.397.7188

1 I declare that I am employed in the office of a member of the bar of this court at  
2 whose direction the service was made and that this declaration was executed on April 18, 2007,  
3 at San Francisco, California.

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